IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.66/2004.

Date of Decision :. 12th July,2007.

Varinder Kumar. …Petitioner.

Versus:

Food Corporation of India and ors. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] Yes

For the petitioner: Mr.Subhash Sharma, Advocate.

For Respondents. Mr.H.K.Bhardwaj, Advocate.

Sanjay Karol, J .

Petitioner is aggrieved by the order dated 29th October, 2002 (Annexure:P-1) passed by Senior Regional Manager, Food Corporation of India whereby , in public interest, petitioner was compulsorily retired in exercise of the powers conferred under Regulation 22(2) of FCI (Staff) Regulations, 1971 (hereinafter referred to as the 'Regulation') and also order dated 30th January, 2003 (Annexure:P-3) passed by the Zonal Manager (North), Food Corporation of India dismissing the representation of the petitioner seeking review of the order dated 29th October, 2002. In the present writ petition, petitioner is seeking quashing of the said orders and further seeking re-instatement in service with all consequential benefits up to the normal age of superannuation.

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

According to the petitioner on 20th October, 1971 he was appointed as Quality Assistant Grade-III and with the passage of time' promoted to the level of Technical Assistant Grade-III on 31st December, 1980 and posted at Sangrur (Punjab). On his transfer in August, 2002, he joined the office at Shimla and thereafter at Mandi and Bilaspur in Himachal Pradesh. Vide order dated 29th October, 2002, petitioner was compulsorily retired in public interest and the petitioner's representation was dismissed on 30th /31st January, 2003. His appeal dated 6th May, 2003 is pending.

Respondents have filed their reply, inter alia, contending that keeping in view the vigilance profile of the petitioner, a decision was taken to retire the petitioner in public interest. There are serious cases of misconduct involving major and minor penalties and vigilance inquires pending against him . It was clarified `that out of thirty cases in which petitioner was either chagesheeted or vigilance inquiry pending, 18 cases pertained to major penalty and 12 cases of minor penalty . In 15 cases inter alia penalties of reversion in rank and reduction of pay scale were imposed at different times during the service period. The order of retirement is based on the recommendation of the Committee constituted for review under Regulation 22(2) of the Regulations. Petitioner's representation was squarely dealt within the guidelines framed by the Corporation and as such a Committee was constituted which went through the entire material and rejected the same.

The respondents have annexed a chart (Annexure:R-1) showing the cases, 33 in number, in which departmental proceedings were initiated against the petitioner. Since the learned counsel for the petitioner seriously disputed the same vide order dated 22nd May, 2007 an opportunity was given to the petitioner to file an affidavit stating the

position. Petitioner affidavit dated 27th May, 2007 clarified that out of 33 cases mentioned in Annexue:R-1, in 8 cases inquiry was pending; 4 cases did not pertain to him; in 6 cases proceedings were either dropped or he was exonerated; in 9 cases the Disciplinary Authority while dis-agreeing with the report of the Inquiry Officer imposed penalty and in 6 cases minor penalties were imposed. In reply, respondent No.1 filed an affidavit dated 30th May, 2007 stating that out of 18 cases of misconduct involving major penalty, at least in 9 cases of proved guilt penalty was imposed and out of 12 cases of misconduct involving minor penalty at least in 6 cases, the petitioner was found guilty and minor penalty imposed.

Shri Subhash Sharma, learned counsel for the petitioner has argued as under:

There was no material on record for the respondents to justify the action of pre-mature retirement as required in terms of circular dated 10th October, 1988; the Review Committee did not form any opinion while deciding the petitioner's case of pre-mature retirement as is required vide Regulation 22(2) of the Regulation; the decision of the Review Committee in any case is a non-speaking order and each case had to be decided on its own merit. A collective/joint decision pertaining to several employees is illegal; petitioner has no adverse ACRs and the decision, radical in nature, is wrongly based on the vigilance cases pending against him; the stand of the respondents, particularly Annexure:R-1, disclosing the vigilance profile of the petitioner is false and unreliable as is evident from the subsequent affidavit's filed on record.

Per contra, Mr.H.K. Bhardwaj, learned counsel for the respondents, relying upon the affidavits has supported the order and submitted that petitioner is guilty of suppression of material facts. Had

he disclosed the various disciplinary actions initiated against him, no notice in the petition would have been issued at the first instance.

Having perused the record, I proceed as under:

For the purpose of adjudication of the controversy, it is important to reproduce the provisions of Regulation 22(2) of the Regulation whereby the petitioner was pre-maturely retired from the service.

> "22 Superannuation and retirement:
>
> (2) Notwithstanding anything contained in Clause(1):
>
> i) The appropriate authority shall, if it is of the opinion that it is in the interest of the Corporation to do so, have the absolute right t retire a Cat. I,II,III & IV employee after he has attained the age of 50 years by giving him a notice of not less than 3 months in writing or 3 months pay and allowances in lieu of such notice.
>
> ii) Provided that an employee belonging to the above categories may, by giving a notice of not less than 3 months in writing to the appropriate authority, retire from service of the Corporation after he has attained the age of 50 years. The qualifying service as on the date of intended retirement of the employees of the Corporation under this provision shall be increased by a period not exceeding 5 years subject to the condition that the total qualifying service rendered by the Corporation employees does not in any case exceed 33 years and it does not take him beyond the date of superannuation.
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> iii) The benefit of five years under sub-clause (ii) above shall not be admissible in cases of those Corporation employees who are prematurely retired by the Corporation in public interest under sub clause (i) above.
>
> Note: In computing the notice period of 3 months referred to above, the date of serving of the notice and that the date of ist expiry shall excluded."

As a policy decision, in terms of its circulars the respondent-Corporation keeps on reviewing the cases of its employees, who in public interest need to be weeded out. The object and purpose being that such of those employees who are inefficient and corrupt and have become a burden on the Organization need to be weeded out without taking any lenient and compassionate view. In terms of circular

dated 10th October, 1988 for the purpose of periodically reviewing the cases of category-III employees, a Review Committee constituting the following members was set up:

! Sr.Regional Manager/Joint Manager(PO) –Chairman of the Committee
2. Joint Manager(Vig.)/Dy.Manager (Vig.) --Member.
3. Joint Manager(A/C)/Dy.Manager(A/C) --Member

The Review Committee was to consider the cases of pre-mature retirement and recommend wherever it was so justifiable based on the material on record.

On 29th October, 2002, the Committee members consisting of Deputy Manager Vigilance, FCI,ZO (North), Deputy Manager (A/Cs), FCI:RO: Shimla and Senior Regional Manager, FCI:RO: Shimla, reviewed all the cases of category-III officials including the petitioner, who had attained the age of 50 years by 31st December, 2001. The Committee took note of the following guidelines which were issued from time to time:

> "a) That the official whose integrity is doubtful or who are found to be ineffective should be retired.
>
> (b) That the entire service record of an official should be considered at the time of review. No employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years or where he has been promoted to a higher post during that 5 years period and his service in the higher post has been found satisfactory.
>
> (c) That no employees should ordinarily be retired on ground of ineffectiveness if in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case.
>
> (d) That an official should not be retired on the grounds of specific acts of misconduct, as a short cut to initiating formal disciplinary proceedings, or for reduction of surplus staff."

And after reviewing all the cases, the Committee came to the following conclusion:

> "In all seven cases of Category-III officials were reviewed (submitted by operating division to the Committee) out of four cases of S/Sh.K.J.Kaushal, TA.I, S/O Sh. Ram Krishan (D.O.B 09.03.1948), Sant Ram Yadav, TA.III S/o Sh. R.D.Yadav, (D.O.B. 1.6.1948), Varinder Kumar, TA.II,S/O Shri Behari Lal (D.O.B. 27.7.49) Jagjit Singh, TA. I,S/o Sh. Ishwar Singh (D.O.B. 08.02.1949) were found fit for retirement and rest three cases no action is required for the present under rule 22(2) of FCI (Staff) Regulation, 1971."

From the aforesaid it is, thus, clear that in exercise of its powers under Regulation 22(2) and after following the criteria laid down from time to time, at the time of considering the cases of all the persons who had attained the age of 50 years as on 31st December, 2001, the Committee came to the conclusion that petitioner, amongst others was required to be compulsorily retired. The decision was taken after considering the entire service record. The periodical review was for all the employees falling in the said category. The Committee consists of senior level functionaries who are presumed to have performed their duties in accordance with the law.

There is a dispute with regard to the actual number of cases of misconduct for which disciplinary action/vigilance inquiry was either initiated or is pending/decided against the petitioner. But considering the undisputed facts which emerge from the petitioner's affidavit dated 27th May, 2007 , it is clear that out of 33 cases, in 29 cases disciplinary proceedings of misconduct were initiated against him and in at least 15 cases, he was found guilty and penalties minor or major were imposed. Certainly, this material was before the Review Committee which had, infact considered the entire service record of the petitioner while reviewing his case. Importantly, petitioner has not

alleged any malafides against the respondents. It is also not his case that he has been discriminated and singled out. The action of the respondents was in terms of its policy decision and in compliance of its Regulations and circulars and absolutely bonafide. In my view, there has been effective consideration and consultation as was required in terms of circular dated 10th October, 1988. Based on sufficient and justifiable material, the Committee and the respondent in their wisdom formed an opinion and thought it fit to retire the petitioner.

The Court in exercise of its powers under Article 226 of the Constitution of India is not to examine the matter as an Appellate Authority and may interfere only if it is satisfied that the order is malafide, based on no evidence or is so arbitrary or perverse that no reasonable person would form the opinion on the given material. In *Barium Chemicals Ltd. and another* vs Company Law Board and others ,AIR 1967 Supreme Court 295, the apex court had held as under:

> "*Though an order passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of mala fides, dishonesty or corrupt purpose*. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the power, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts.
>
> In other words, the enumeration of the inferences which may be drawn from the circumstances, postulates the absence of a general discretion to go on a fishing expedition to find evidence. No doubt the formation of opinion is subjective but

> the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exists, the action might be exposed to interference unless the existence of the circumstances is made out. Since the existence of "circumstances" is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least prima facie. It is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to conclusion of certain definiteness.
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> Quite obviously there is a difference between not forming an opinion at all and forming an opinion upon grounds, which, if a Court could go into the question at all, could be regarded as inapt or insufficient or irrelevant. *A Court cannot go into the question of the aptness or sufficiency of the grounds upon which the subjective satisfaction of an authority is based."*
>
> (Emphasis supplied)

It is settled law that the order of compulsory retirement has to base on the opinion that it is in public interest to do so. The order is required to be passed on the subjective satisfaction of the Authority. The Review Committee has to consider the entire record of service including the confidential record/character rolls, both favourable and adverse before forming any opinion. There may be any number of remarks, observations and comments, which though would not constitute adverse but are certainly relevant for the purpose of forming the said opinion.

It is also a settled law that an order of compulsory retirement is not liable to be quashed by a Court merely on the showing, that while passing the same uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be basis for interference. The representation against any adverse remarks,

uncommunicated or communicated, need to be dealt with reasonable promptitude. But however, action contemplated for compulsory retirement need not await the final disposal of such representation. This is for the reason that the Review Committee is generally composed of high and responsible officers.

It is also settled law that an order of compulsory retirement is not a punishment. It does not imply any stigma and principles of natural justice have no place in the context of an order of compulsory retirement.

The principles of law relating to compulsory retirement have been crystallized and broadly summarized by the Apex Court in ***State of Gujarat Vs. Umedbhai M. Patel*** (2001) 3 Supreme Court Cases 314 as held as under:

> "(i) Whenever the services of a public servant are no longer useful to the general administration, he can be compulsorily retired for the sake of public interest.
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> (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.
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> (iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.
>
> (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weight in passing such order.
>
> (v) Even uncommunicated entries in the confidential record can also be taken into consideration.
>
> (vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.
>
> (vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.
>
> (viii) Compulsory retirement shall not be imposed as a punitive measure."

The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement in my view this court would have no authority or jurisdiction to interfere with. If the exercise of power is bona fide on the basis of the material available on record. Usurpation of authority is not only unwarranted but contrary to all norms of judicial review. Interference by the courts is restricted and the issue has to be treated with utmost care and caution by reason of very limited scope of interference.

If the conduct of a government employee becomes unbecoming to the public interest or obstructs the efficiency in public services, the employer has an absolute right to compulsorily retire such an employee in public interest. The right to compulsorily retire an employee is in fact a method to ensure efficiency in public service. In fact, entire service record, character roll or confidential report furnishes the materials to find out whether the employee has outlived his utility in service. It is on consideration of totality of the materials that the employer is expected to form its opinion whether an employee is to be compulsorily retired or not. ***[(State of U.P. and another Vs. Lalsa Ram*** (2001) 3 Supreme Court Cases 389;) **(State *of U.P. and others Vs. Vijay Kumar Jain*** (2002) 3 Supreme Court Cases 641)]

In ***Union of India Vs. V.P.Seth and another***, AIR 1994 Supreme Court 1261 it has been held that the rule of *audi alteram partem* has no application in the case of compulsory retirement.

In ***Union of India Vs. Col. J.N.Sinha and another,*** 1970 (2) Supreme Court Cases 458 , the apex Court held as under:

> "One of the conditions of the Ist respondent's service is that the Government can choose to retire him any time after he completes fifty years if it thinks that it is in public interest to do so. Because of his compulsory retirement he does not lose any of the rights acquired by him before retirement. Compulsory retirement involves no civil consequences. The aforementioned Rule 56 (j) is not intended for taking any penal action against the Government servants. That rule merely embodies one on the facets of the pleasure doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organizations and more so in Government organizations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual Government servant and the interest of the public. While a minimum service is guaranteed to the Government servant, the Government is given power to energize its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.
>
> It is true that a compulsory retirement is bound to have some adverse effect on the Government servant who is compulsorily retired but then as the rule provides that such retirements can be made only after the officer attains

> the prescribed age. Further, a compulsorily retired Government servant does not lose any of the benefits earned by him till the date of his retirement."
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> (Emphasis supplied)

Keeping in view the aforesaid position in law, it cannot be said that the orders of the respondents are either arbitrary or perverse. It cannot be said that there was no material before the Review Committee to form an opinion. According to the petitioner's own affidavit, at least 9+6=15 cases are such in which major and minor penalties have been imposed. Annexure R-1 shows that the allegations of mis-conduct are serious including that of financial impropriety. The authority in its wisdom has thought it fit to pass the order against whom there have been serious charges and/or allegation of financial impropriety and misconduct. Certainly the respondent has a right to weed out such persons who may be perceptibly undesirable in maintaining a congenial conducive and healthy atmosphere in the office and also change the perception of the organization in the minds of other employees as also the people. Respondent required a face lift and it did so in its best interest. In this view of the matter, I do not find favour with the submissions of the learned counsel for the petitioner. There is no substance in the submission that the authority did not come to form an opinion with regard to their subjective satisfaction of the fact that the petitioner's services, in public interest, were not required by the respondents. I have reproduced the opinion of the Committee who were unanimously of the view that out of 7 cases 4 were found fit to be retired.

It is true that the petitioner's case was not considered separately by the Review Committee. However, perusal of the record of the minutes of the Committee would show that all the cases of the employees, who had attained 50 years of age as on 31st December,

2001 were reviewed and the entire service records were considered at the time of review. Therefore no prejudice is caused to the petitioner at all and in any event there is no requirement for considering each case separately simply because there are no adverse ACR against the petitioner would not render the order bad as the entire service record has to be seen. The order though brief is duly supported by the record.

It has not been urged that the order compulsorily retiring the petitioner was mala fide or was not in the public interest, and in the absence of such a case, it is not possible to find any infirmity in the order compulsorily retiring the petitioner from service.

No other point was urged by the learned counsel for the parties.

In view of the aforesaid discussions, it cannot be said that the orders are arbitrary, perverse or malafide requiring interference by this Court. The writ petition is, therefore, dismissed with no order as to costs.

(**Sanjay Karol),**
Judge.

July 12th, 2007(R)